



Federal Communications Commission
Washington, D.C. 20554

February 11, 2013

DA 13-181

John DeJung
Director of Public Safety
Dane County Department of Public Safety
210 Martin Luther King Junior Boulevard
Madison, WI 53703

Re: Narrowbanding Waiver Request

Dear Director DeJung:

Dane County Wisconsin (Dane) requests a waiver of the prohibition in Section 90.203(j)(10) of Commission's rules¹ on the manufacture and import of wideband (25 kHz) capable equipment.² It seeks this waiver in order to ensure a safe and orderly transition to a new VHF system for which Dane and other licensees previously were granted a waiver of the Commission's narrowbanding deadline.³ Dane seeks a waiver of this prohibition on behalf of its manufacturer, Harris Corporation (Harris), to allow Harris to sell it dual-band (25 kHz and 12.5 kHz) radios.⁴ By this letter order and for the reasons set forth below, we grant the requested relief and grant Harris Corporation a waiver of Section 90.203(j)(10) to allow it to enable the wideband functionality in radios belonging to Dane and those licensees who are subject to the Dane Waiver Grant.

Background. On November 5, 2012, the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau (collectively the Bureaus) granted Dane a waiver, until December 31, 2013, of the Commission's VHF/UHF narrowbanding deadline, which requires private land mobile radio (PLMR) licensees in the 150-174 MHz and 450-512 MHz bands to operate using channel bandwidth of no more than 12.5 kHz, or equivalent efficiency, by January 1, 2013.⁵ The Bureaus granted Dane the waiver to allow Dane to transition on to a new VHF system and also granted a waiver to other specified licensees that will be joining the new system.

¹ See 47 C.F.R. §90.203(j)(10) (manufacture and import).

² See Request for Waiver, filed January 4, 2013 (Waiver Request).

³ See Letter, dated November 5, 2012 from Zenji Nakazawa, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau and Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to John DeJung, Director of Public Safety, Dane County of Public Safety (Dane Waiver Grant).

⁴ Waiver Request at 3.

⁵ See 47 C.F.R. § 90.209(b)(5); see also Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Third Memorandum Opinion and Order and Third Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004). On April 26, 2012, the Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Office of Engineering and Technology waived the January 1, 2013 narrowbanding deadline for 470-512 MHz band frequencies. See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Order*, WT Docket No. 99-87, RM-9332, 27 FCC Rcd 4213 (WTB/PSHSB/OET 2012).

Section 90.203(j)(10) prohibits the continued manufacture and import of wideband capable equipment. Manufacture and import of previously certified multi-mode equipment is permitted, however, if the modes of operation are enabled primarily through software rather than firmware or hardware, and users are not provided with the programming software necessary to activate the wideband 25 kHz mode.⁶ In order to ensure a safe and orderly transition to the new system, Dane now seeks a waiver of the prohibition in Section 90.203(j)(10) on the manufacture and import of wideband capable equipment, in order to permit Dane to purchase new equipment that is capable of both 12.5 kHz (narrowband) and 25 kHz (wideband) operation so that it can deploy this new equipment prior to the system cutover. Specifically, Dane indicates that it and the other system users utilize previously certified equipment that the manufacturer Harris has disabled from accessing the wideband mode. It requests that Harris be permitted to enable them to access their equipment's inherent wideband functionality so that they can utilize the equipment in wideband mode during the transition to the new system. It represents that the equipment would be returned to narrowband-only operation within fourteen days of completion of the new system.

Discussion. To obtain a waiver of the Commission's rules a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;⁷ or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest or the applicant has no reasonable alternative.⁸

Based on the record before us, we conclude that Dane has presented sufficient facts to meet the high standard for grant of the requested waiver. As we stated in the Dane Waiver Order, the County and other licensees have shown diligence in planning and have invested substantial resources in preparation for the migration to their new system. We believe the new system will significantly upgrade the County's communications capabilities, which will improve the safety and reliability of its operations. Absent a grant of the waiver, however, the County would be unable to reap the full benefit of its system upgrade until it converted to narrowband operations at or near the end of its waiver period. Dane claims that it "faces the choice of purchasing legacy wideband devices or seeking authorization from the Commission to enable the wideband functionality of the devices it will use for its narrowband system."⁹ We agree, and find that purchasing additional devices to be used solely during the County's transition to narrowband would be an impractical use of resources that would be better spent authorizing wideband functionality in the "approximately 700 individual [narrowband] radios"¹⁰ that the County has already purchased.

Therefore, we grant Dane County a waiver of the prohibition on the manufacture and import of radio frequency devices operating with a maximum channel bandwidth greater than 12.5 kHz¹¹ until fourteen calendar days after the expiration of the waiver period ending December 31, 2013, or until

⁶ See Licensees, Frequency Coordinators, and Equipment Manufacturers Reminded of Narrowband Migration Deadlines in the 150-174 and 421-512 MHz Bands, *Public Notice*, 24 FCC Rcd 14511, 14513 (WTB/PSHSB/OET 2009).

⁷ 47 C.F.R. § 1.925(b)(3)(i).

⁸ 47 C.F.R. § 1.925(b)(3)(ii).

⁹ Waiver Request at 3.

¹⁰ *Id.*

¹¹ See 47 C.F.R. §§90.203(j)(10).

fourteen calendar days after the narrowband system becomes operational, whichever occurs first, for Dane and associated licensees.

Accordingly, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925(b)(3)(i) of the Commission's rules, 47 C.F.R. § 1.925(b)(3)(i), that the Request for Waiver of Commission rules, filed on January 4, 2013 by Dane County IS GRANTED to the extent described herein.

This action is taken under delegated authority pursuant to Sections 0.131, 0.191, 0.331, and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.191, 0.331, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Zenji Nakazawa
Deputy Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau